

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jon Liroff	Team: Team # 4	CCRB Case #: 200602725	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/02/2006 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 17	18 Mo. SOL 9/2/2007	EO SOL 9/2/2007	
Date/Time CV Reported Fri, 03/03/2006 11:31 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/03/2006 11:31 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Jason Rubenstein	24550	931108	017 PCT
3. POM Brian Taylor	05547	933403	017 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Howard Lilley	19720	895643	017 PCT
2. POM Gavin Hormillosa	01219	926968	017 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Rubenstein	Force: PO Jason Rubenstein used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Brian Taylor	Force: PO Brian Taylor used physical force against § 87(2)(b)	§ 87(2)(b)
C. An officer	Force: An officer used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Brian Taylor	Off. Language: PO Brian Taylor made remarks to § 87(2)(b) based upon ethnicity.	§ 87(2)(b)

Synopsis

On March 2, 2006, § 87(2)(b) was a resident of § 87(2)(b), located at § 87(2)(b) in Manhattan. At approximately 11:00 PM that night, § 87(2)(b) returned to the shelter intoxicated and past curfew. § 87(2)(b) a Resident Aid, informed § 87(2)(b) that she had lost her bed for the night and instructed her to wait in the lobby until staff could find her another bed. § 87(2)(b) refused and went to the 3rd floor, where she had been staying previously. § 87(2)(b) was loud and disruptive and would not return to the lobby. § 87(2)(b) called 911 and POs Jason Rubenstein and Brian Taylor of the 17th Precinct responded. The officers instructed § 87(2)(b) to go back downstairs or she would be removed from the shelter. When § 87(2)(b) again refused to do so, PO Taylor attempted to restrain her and she shoved him. The officers then went to place § 87(2)(b) under arrest, pushing her against the wall and pulling her arms behind her back. **(Allegations A and B)** § 87(2)(b) alleged that one of the officers then struck her head against the wall several times. **(Allegation C)** § 87(2)(b) was removed to § 87(2)(b) where she was strapped to a bed with cloth restraints. § 87(2)(b) alleged that when she complained of pain to her elbow at hospital, PO Taylor told her, “Shut up, you spic.” **(Allegation D)**

on June 15, 2006. When § 87(2)(b) was treated at § 87(2)(b) doctors found that she had a possible fracture to her right elbow and placed it in a cast. § 87(2)(g)

§ 87(2)(g)

Summary of Complaint

This case was initially assigned to Inv. Ayirini Fonseca-Sabune on March 7, 2006 and was transferred to the undersigned investigator on June 15, 2006.

§ 87(2)(b) – CCRB Complaint – March 3, 2006 – Encl. 3a-3b

§ 87(2)(b) filed her complaint via telephone, at which time she stated that she was a resident of a homeless shelter and that on March 2, 2006 she failed to comply with the orders of one of the security guards and police were called. § 87(2)(b) stated that she was slightly intoxicated and resisted arrest when three officers responded and pushed her up against a wall to handcuff her. The officers then dragged § 87(2)(b) across the floor causing scrapes to her arms and elbows. She was handcuffed tightly and one of the officers spit in her face. Other officers arrived and § 87(2)(b) was lifted by her arms and legs and thrown into an ambulance before being transported to the emergency room at § 87(2)(b) § 87(2)(b) provided shield numbers for three of the officers, identifying POs Howard Lilley and Gavin Hormillosa of the 17th Precinct as well as PO Eric Karl of the 44th Precinct.

§ 87(2)(b) – CCRB Statement – March 9, 2006 – 4a-4d

§ 87(2)(b) is a Hispanic female, 5’4”, 168lbs, § 87(2)(b). § 87(2)(b) was interviewed at the CCRB and stated that on March 2, 2006 she drank four Heineken’s between 5:00 PM and 7:00 PM that evening, but did not drink after that. At approximately 11:00 PM, § 87(2)(b) went to § 87(2)(b) at § 87(2)(b) in Manhattan. Because she arrived after 10:00 PM, § 87(2)(b) lost her bed and was instructed by a Resident Aide – identified through investigation as § 87(2)(b) – to remain in the first floor lobby. Because § 87(2)(b) did not follow § 87(2)(b) directions, but instead went upstairs to the 3rd floor lounge, § 87(2)(b) called the police.

Initially, three police officers came into the lounge – identified through investigation as POs Jason Rubenstein, Brian Taylor and an unidentified third officer. PO Taylor told § 87(2)(b) “You have to go downstairs.” § 87(2)(b) replied that she was not going to go downstairs because she wanted to get her clothes. PO Taylor then told her that she had to leave or she would be arrested. § 87(2)(b) asked what she would be arrested for and the officers again instructed her to leave. She told them she would not leave until she got her clothes. POs Rubenstein and Taylor repeatedly told § 87(2)(b) she needed to leave or she would be arrested. § 87(2)(b) refused to leave. After approximately 5-10 minutes, § 87(2)(b) went to retrieve her clothes from the room in which she had been staying.

PO Taylor then told § 87(2)(b) “You’re not going to listen? Then we’re going to have to arrest you.” § 87(2)(b) replied, “No, you’re not going to arrest me. I haven’t done anything. I just want my clothes. You’re not going to put the handcuffs on me.” § 87(2)(b) tried to enter the hallway off the lounge and PO Taylor placed his hands on the front of § 87(2)(b)’s upper chest, pushing her against the wall. § 87(2)(b) then put her hands on PO Taylor’s chest and shoved him back. At this point, § 87(2)(b) again tried to walk down the hall but the officers grabbed her hands, pulled them behind her back and then pushed § 87(2)(b) against the wall chest first.

§ 87(2)(b) told the officers, “Let me go. Let me go,” and tried to get away. § 87(2)(b) then moved her hands and arms to prevent the officers from cuffing her. One of the officers, § 87(2)(b) did not know who, placed his hands on the back of her head and struck her face against the wall three or four times. The other women in the lounge began to yell at the officers, “What are you doing? You don’t have to bang her up. You don’t have to hit her like that.”

PO Taylor and PO Rubenstein cuffed § 87(2)(b) and escorted her through the lounge to the elevator and down to the front of the building. Outside, an ambulance was waiting across the street. The officers escorted § 87(2)(b) toward the ambulance but fell face first onto the ground. § 87(2)(b) was not sure how or why she fell but stated she may have slipped on some ice. Two officers then lifted § 87(2)(b) by the feet while two others lifted her by the handcuffs. § 87(2)(b) did not know which officers did this. They carried her a couple of steps and “threw” her into the ambulance. § 87(2)(b) stated that the officer did not place or walk her into the ambulance but in fact threw her such that she landed on a gurney inside. Either PO Taylor or PO Rubenstein accompanied § 87(2)(b) to the hospital and provided the EMT with information about her.

§ 87(2)(b) was taken to § 87(2)(b) where she was handcuffed to a bed and her hands and feet were strapped down with cloth restraints. § 87(2)(b) began to scream, “My arm, my arm, my arm.” PO Taylor then told her, “Shut up, you spic.” § 87(2)(b) said that she wanted to see her kids and refused assistance until they came. The officers uncuffed her and left the hospital at approximately 1:30 AM.

§ 87(2)(b) was examined, received a catscan and was given pain medication. At approximately 4:45 AM on § 87(2)(b) she was sent back to the shelter. That afternoon she was seen again at § 87(2)(b) in the Bronx where doctors told her she had no broken bones. However, on § 87(2)(b), § 87(2)(b) was called back to § 87(2)(b) and informed that her X-rays had been read incorrectly and she in fact had a fracture to her right arm. The doctors then placed her arm in a cast.

§ 87(2)(b)’s caseworker gave her three badge numbers of officers who were present during the incident, 1219, 19720 and 21580. They correspond to POs Howard Lilley and Gavin Hormillosa of the 17th Precinct and PO Eric Karl of the 44th Precinct respectively.

§ 87(2)(b) – Photographs – March 9, 2006 – Encl. 5a-5b

Inv. Fonseca-Sabune photographed § 87(2)(b) at the time of her interview. The photographs reveal a small contusion above § 87(2)(b)’s right eye and substantial echymosis – settling of blood in soft tissue – around the bottom of her eye.

Results of Investigation

Civilian Witness Statements

§ 87(2)(b) – Written Statement – March 7, 2006 – Encl. 6a-6b

§ 87(2)(b) is a Resident Aide at § 87(2)(b) and was the individual who called 911 on the night of the incident. § 87(2)(b) prepared a written statement for her supervisors which was released to the CCRB under subpoena. While this copy was redacted, § 87(2)(b) filled in the redactions verbally when interviewed in person on August 23rd, 2006.

To Whom It May Concern,

This letter is in regards to the night in question regarding Ct. § 87(2)(b). Ct. entered into Facility after eleven o'clock. Ct. was visibly intoxicated. Ct. began to question why her bed was not held even though she violated curfew. Ct. refused to sit in the R/A station and wait to be placed in a bed. Ct. also refused to be monitored. Ct. began to head upstairs to the 3rd Fl. I then told § 87(2)(b) to please have a seat and follow proper procedures. Ct. still continued to go to the staircase and began to curse me out and then informed me that if I wanted to get her back downstairs I would have to call the police. I then waited a few minutes to see if Ct. would return on her own when she didn't I sent an R/A upstairs to get her. Ct. refused. I made another attempt with a different R/A, Ct. still refused. Also I found out that Ct. entered into (her previous room) and began to put her belongings inside, another attempt by a P/A was made to get Ct. downstairs. I still made statements pertaining to me having to call the cops to get her down. 911 was finally called. A lot of police entered but I only requested 2 to go upstairs with me. When we got there Ct. was asked by police to please come downstairs. Ct. began to curse and ask why should she have to listen to them. Ct. became very disrespectful and began to try to walk in the opposite direction that the police were telling her to go. Ct. was warned by the police to follow their instructions or force would be used. Ct. began to step up closer in the officer's face. They informed her to back up. Ct. stepped up further and challenged officers. Ct. then raised her hand to push officer out of her face and at that point the two officers began to restrain Ct. When the cuffs were being put on her Ct. was pushed up against the wall and I believe Ct. lost her balance and hit the side of her head. Ct. was then brought into the elevator and brought out of the building.

§ 87(2)(b) – CCRB Statement – August 23, 2006 – Encl. 7a-7c

§ 87(2)(b) was interviewed at § 87(2)(b) at § 87(2)(b) in Manhattan on August 23, 2006. § 87(2)(b) stated that on March 2, 2006 she was working as a Residential Aide, which entails supervising and assisting the clients during their stay. At approximately 11:00 PM, § 87(2)(b) entered the building and appeared to be intoxicated. § 87(2)(b) was in violation of the 10:00 PM curfew and had already been placed on the "monitoring list" for repeatedly returning to the facility intoxicated.

Because § 87(2)(b) had missed curfew, her bed was given to another resident and § 87(2)(b) was instructed to wait in the lobby while staff found her another bed. § 87(2)(b) told § 87(2)(b) to have a seat and § 87(2)(b) told her, "Fuck you. Call the cops." § 87(2)(b) then entered the staircase and went toward the third floor. § 87(2)(b) radioed another resident assistant to attempt to calm § 87(2)(b) but she was still uncooperative. Other residents came down to the lobby, reporting that § 87(2)(b) was "causing a scene."

At that point, § 87(2)(b) went up to the third floor and saw that § 87(2)(b) was in her old room, going through the locker and waking up other residents. § 87(2)(b) again asked § 87(2)(b) to go downstairs and § 87(2)(b) made verbal threats to § 87(2)(b) indicating that she was going to "attack" her.

§ 87(2)(b) went down to the lobby and called the police. Approximately ten minutes later, two officers arrived – identified through investigation at PO Rubenstein and PO Taylor – and § 87(2)(b) escorted them

upstairs, where they encountered § 87(2)(b) exiting her old room. § 87(2)(b) told § 87(2)(b) that she needed to go downstairs. The officers told § 87(2)(b) she needed to go downstairs and she replied, “You can’t tell me what the fuck to do.”

§ 87(2)(b) could not differentiate between the two officers in her description but stated that § 87(2)(b) approached one of them and got very close to his face. The officer told § 87(2)(b) to back up approximately four times. § 87(2)(b) replied, “What the fuck are you going to do if I don’t?” The officer told § 87(2)(b) that he might have to remove her from the building if she did not go downstairs. § 87(2)(b) approached the officer and raised her right arm to strike him. The officer grabbed her hand and pulled her arm behind her back. As the officer did this, he turned § 87(2)(b) around and she lost her balance and fell against the wall.

With § 87(2)(b) placed against the wall, the officers rear-cuffed her. When § 87(2)(b) stepped back from the wall, she had a contusion above one of her eyes. § 87(2)(b) stated that she could see the officers throughout the incident and neither officer intentionally struck § 87(2)(b)’s head against the wall. Although one of the officers did continue to apply pressure to § 87(2)(b)’s back with his forearm as she struggled after being cuffed.

Other officers arrived but were not needed so they went back downstairs. The first two officers escorted § 87(2)(b) to the elevator and down to the first floor. The officers then escorted § 87(2)(b) out the front door of the building, where an ambulance was waiting at the curb. § 87(2)(b) dropped to her knees and laid down in the street, refusing to get into the ambulance. The officers lifted § 87(2)(b) to her feet by grabbing her under the armpits. § 87(2)(b) began to comply and climbed into the ambulance on her own. When asked directly, § 87(2)(b) stated that neither officer lifted § 87(2)(b) by the hands or handcuffs and stated again that the officers lifted her from under the armpits.

Civilians Not Interviewed

At the time of her in-person statement, § 87(2)(b) recalled the names of only three individuals who witnessed the March 3, 2006 incident: § 87(2)(b) and § 87(2)(b) § 87(2)(g)

Per § 87(2)(b) and § 87(2)(b), § 87(2)(b), § 87(2)(b) and § 87(2)(b) no longer live at the shelter. § 87(2)(g)

§ 87(2)(g)

Police Officer Statements

PO Jason Rubenstein – AIDED Report – March 2, 2006 – Encl. 17e-17i

Victim - § 87(2)(b) of § 87(2)(b)

- Emotionally Disturbed
- Physically Threatening
- Attempting to Harm Others
- Verbally Threatening

"At t/p/o aided was violent edp spitting verbally abusive, physically threatening others. Aided edp received bruise and swelling above right eye while being restrained and was cuffed and removed to § 87(2)(b) where she was restrained by hospital staff."

PO Jason Rubenstein – Memo Book Entry – March 2, 2006 – Encl. 8

2344 10-54 EDP Violent, arrived ask EDP to go downstairs several times, EDP refused physically threaten police officer cuffed for safety, EDP resisted was spitting, verbally abusive, EDP had bruised her right eye

PO Jason Rubenstein – CCRB Statement – July 7, 2006 – Encl. 9a-9c

PO Jason Rubenstein stated that at approximately 11:44 PM on March 2, 2006, he and PO Brian Taylor responded to a report of a violent EDP inside a homeless shelter at § 87(2)(b) in Manhattan. The officers were greeted by a female security guard, who explained that the EDP – identified as § 87(2)(b) – was not allowed to stay the night at the facility and had been asked to leave but was refusing to do so. The officers and security guard went upstairs and PO Rubenstein told § 87(2)(b) who stood in the doorway of a bedroom, “Ma’am, you can’t stay here tonight.”

PO Rubenstein stated, “When we first got there, she was loud and she was verbally abusive, but she was under control. As we started trying to get her to come out from the doorway and out from the bedroom, she got a little bit more... like moving with her hands and a little bit violent. She actually walked past us and pushed us at one point and we were like, ‘Alright listen, ma’am, we just want to go downstairs. We just want to talk. They said you’re not allowed to stay here. You’re not allowed to be here for the night.’”

§ 87(2)(b) then approached the officers, swinging her arms and pointing. PO Rubenstein reached toward § 87(2)(b) and said, “C’mom.” § 87(2)(b) then slapped PO Rubenstein’s hand away. PO Rubenstein grabbed § 87(2)(b)’s right arm and PO Taylor grabbed her left arm. § 87(2)(b) was trying to pull away from the officers so they pushed her against the wall to cuff her. As § 87(2)(b) weighed in excess of 220lbs, it was difficult for the officers to pull her arms behind her back. The officers cuffed one of § 87(2)(b)’s hands and, as they tried to pull her other arm behind her back, § 87(2)(b) began banging her head on the wall and saying, “I know how to play the game. I know how to play the game.” PO Rubenstein did not know what § 87(2)(b) meant by this.

After successfully cuffing § 87(2)(b) PO Rubenstein and PO Taylor pulled her backward toward the elevator. As they were getting into the elevator with § 87(2)(b) several other officers came up the stairs. While exiting the facility, § 87(2)(b) repeatedly spat in PO Rubenstein’s face. PO Rubenstein and PO Taylor escorted § 87(2)(b) out of the building and she dropped to her knees on the sidewalk, refusing to move for approximately five seconds. The officers lifted her again to her feet and escorted her to awaiting ambulance. Two EMTs lifted § 87(2)(b) into the back of the ambulance and strapped her to a chair. PO Rubenstein did not use any force to place § 87(2)(b) in the ambulance nor did he use any force against § 87(2)(b) inside the ambulance. PO Rubenstein then rode with § 87(2)(b) to § 87(2)(b).

At Bellevue, § 87(2)(b) was verbally abusive to the doctor and because she continued to spit, the doctor affixed a spit-shield to § 87(2)(b)’s face. PO Rubenstein tried to calm her down but did not say anything to the effect of “shut up” or call § 87(2)(b) a “spic.” PO Rubenstein stated that he is Hispanic and would not have used that term anyway.

PO Rubenstein stated that the shelter from which they removed § 87(2)(b) calls the police frequently, and usually requests that individuals be removed to the hospital. As such, EMS is usually called but not always necessary. PO Rubenstein stated that he and PO Taylor did not go to the shelter with the intention of arresting § 87(2)(b) or taking her to the hospital, but to assess the situation and remove § 87(2)(b) from the facility.

When shown a photograph of § 87(2)(b) taken at the CCRB on March 9, 2006, revealing a large bruise around § 87(2)(b)’s right eye and her right arm in a cast, PO Rubenstein was surprised at the extent of the injuries, and stated that they appeared far more severe in the photo than they did when she was removed from the facility. PO Rubenstein stated that after the incident § 87(2)(b) had a small bruise/swelling above her right eye, but did not sustain any bruises beneath the eye. PO Rubenstein stated that, besides handcuffing her, the officers did not use any force against § 87(2)(b) that would have injured her elbow.

PO Brian Taylor – Memo Book Entry – March 2, 2006 – Encl. 12a-12c

2344 54 EDP Violent @ § 87(2)(b) (Resisting)

0055 93Q – while restraining EDP § 87(2)(b) she hit her head against the wall causing swelling above the right. Resisted a lot of numerous request to leave the 3rd fl. when she became violent.

PO Brian Taylor – CCRB Statement – July 21, 2006 – Encl. 13a-13b

§ 87(2)(g)

The officers instructed § 87(2)(b) to leave the third floor lounge and she refused to do so. § 87(2)(b) grew belligerent, calling the officers “crackers” and “white trash” and shouting obscenities at them. § 87(2)(b) pushed her way past the officers and walked up a small set of steps (2-4 steps) off the lounge. PO Taylor reached out and grabbed § 87(2)(b) – he was not sure where – to try and pull her back into the lounge and she pushed him in the chest and told him, “Get your fucking hands off me.”

As § 87(2)(b) refused to leave, was verbally abusive and physically confrontational, PO Rubenstein and PO Taylor looked at each other and nodded in agreement, deciding to detain § 87(2)(b). PO Taylor grabbed § 87(2)(b)'s right arm and PO Rubenstein grabbed her left. As the officers tried to pull § 87(2)(b)'s arms behind her back, she continued to pull away and flail her arms. The officers then pushed § 87(2)(b) – chest first – against a wall to contain her while they placed her in cuffs. PO Taylor did not see if § 87(2)(b) struck her head on the wall at this time.

§ 87(2)(b) continued to be verbally abusive and began spitting at the officers, so much so that they had to point her toward the wall as they waited for the elevator. After exiting the building, § 87(2)(b) dropped to the ground, going down on her stomach almost completely prostrate. § 87(2)(b) refused to move toward the ambulance. PO Taylor grabbed § 87(2)(b)'s ankles while PO Rubenstein and an EMT each grabbed § 87(2)(b) by a shoulder. The officers then lifted § 87(2)(b) off the ground and carried her to the ambulance. She kicked her feet and legs throughout this part of the incident. When § 87(2)(b) was within a yard of the ambulance, she began to cooperate and stated that she would get inside of her own accord. The officers put § 87(2)(b) down and she climbed inside.

PO Taylor rode to § 87(2)(b) in the back of ambulance with § 87(2)(b) who was verbally abusive to the EMTs and continued to spit, so much so that the EMT placed a white mask over her mouth. At the hospital PO Taylor went inside with § 87(2)(b). PO Rubenstein joining them soon after. § 87(2)(b) continued to be verbally abusive to the doctors and nursing staff, who then strapped her to a gurney. PO Taylor told § 87(2)(b) to “play nice” and cooperate with the hospital staff, emphasizing that they were trying to help her. PO Taylor stated that neither he nor his partner told § 87(2)(b) “Shut up spic,” nor would they have because PO Rubenstein is Hispanic.

PO Gavin Hormillosa – CCRB Statement – July 7, 2006 – Encl. 11a-11b

PO Gavin Hormillosa's memo book noted only that he backed Sector D at § 87(2)(b) at the time of this incident. PO Hormillosa stated that when he and several other officers responded to the location, they entered the building and took the stairs to the third floor. However, by the time the officers got upstairs, POs Rubenstein and Taylor had already cuffed § 87(2)(b).

PO Hormillosa went back downstairs and opened the rear doors of the ambulance so that the EMTs could lift § 87(2)(b) inside. PO Hormillosa did not witness any officers or EMTs use any force against § 87(2)(b).

PO Howard Lilley – CCRB Statement – July 14, 2006 – Encl. 15a-15b

PO Howard Lilley had no entries in his memo book regarding this incident. When PO Lilley arrived on scene, the elevator was “shut down” because other officers had already gone upstairs to remove the EDP.

PO Lilley heard over the radio that the situation was under control and left the location. PO Lilley never saw the EDP.

Officers Not Interviewed

SPRINT records show that at least eight officers responded during the incident. However, while § 87(2)(b) claimed a third officer went upstairs initially, surveillance footage and other witness accounts confirmed that only PO Rubenstein and PO Taylor were present when § 87(2)(b) was taken into custody and that the other officers arrived upstairs only after § 87(2)(b) was in cuffs. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Police Department Documents and Officer Identification – Encl. 17a-17l

SPRINT records show that 11:44 PM on March 2, 2006, a call came over for an AIDED female inside of § 87(2)(b) Sector 17D was the first to respond, followed later by the patrol supervisor, sector 17G, 17A and 17SP41. At 12:04 AM the AIDED was removed to § 87(2)(b). An AIDED report completed by PO Jason Rubenstein indicated that he was on scene and roll call identified his partner as PO Brian Taylor. PO Howard Lilley and PO Gavin Hormillosa were identified by shield numbers they provided to § 87(2)(b) staff upon entering the building. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated three officers responded initially. One was a white male, over 6' and "big." The second was a white male, approximately 5'5", with dark hair and glasses. § 87(2)(b) stated that these two officers used force against her and she could not describe the third officer. By all other accounts, only PO Taylor (white male, 6'1", 215lbs, salt and pepper hair) and PO Rubenstein (Hispanic male, 5'7", 220lbs, black hair) responded. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Surveillance Footage – § 87(2)(b)

Surveillance footage from two cameras at § 87(2)(b) – one inside the lobby and one outside the front door – shows six uniformed officers standing in the lobby until approximately 11:52 PM, at which time they enter the staircase. Approximately one minute later, those six officers emerge from the staircase as PO Rubenstein and PO Taylor exit the elevator with § 87(2)(b). PO Rubenstein escorts § 87(2)(b) toward the front door and is the only officer in contact with § 87(2)(b). She is calm and PO Rubenstein is not using any force against her. As the officers exit the building, the camera over the front shows PO Rubenstein escorting § 87(2)(b) outside. The ambulance is out of frame and the footage does not show § 87(2)(b) going to the ground. No injuries are visible from this vantagepoint either.

Medical Records – Encl. 16a-16z

§ 87(2)(b)'s FDNY Prehospital Care Report, dated March 3, 2006, indicated that she had no presenting medical problem. Under chief complaint, the report states, "Pt is screaming profanities." § 87(2)(b) was determined to be intoxicated and had swelling around her eye. § 87(2)(b) refused prehospital care and refused to sign the report. The narrative history stated the following:

Pt § 87(2)(b) (fem) found (prostrate) in street wrestling with PD and screaming profanity. Witnesses state she was intoxicated and had to be removed from a shelter by PD. PE reveals A+Ox3, PERL, +pulse, motor, sensory x 4.

Pt. Is extremely uncooperative and would not allow for further evaluation. Pt presents with swelling above R eye and was restrained prior to EMS arrival. Pt refused to provide medical information and refused cold pack application to R eye. Pt txp to 02 (sitting) restrained w/ PD escort.

§ 87(2)(b)'s Medical Records from § 87(2)(b) dated § 87(2)(b) noted the following:

~~NYPD~~ *Pt. uncooperative and verbally abusive @ triage, swelling noted to R eyelid*

Nurse's notes:

1225 - § 87(2)(b) *refused to allow nurse to take vitals*

1250 - *NYPD aided, + EDP, acting irrationally and combative. PT AOx3, breathing spontaneously. Upon exam, + R eyebrow hematoma noted. neg. bleeding. Pt. in NAD waiting MD eval.*

0210 - *Vitals were taken*

0220 - *"Pt much more calm. Pt. also c/o pain to R forearm" sent to CT*

0240 - *"Pt. returned from CT. NAD. Pt. given ice pack for hematoma."*

At an unnoted time, § 87(2)(b) was seen by a resident MD who diagnosed her with periorbital hematoma – black eye – and instructed her to “return to ER for worsening symptoms / ice to face / follow up in ophthalmology clinic.” § 87(2)(b) was prescribe Tylenol as need for pain.

§ 87(2)(b)'s medical records from § 87(2)(b) dated March 3, 2006 indicate that her chief complaint was being hit by the police. § 87(2)(b) told the doctor that she was hit in the head and thrown to the ground. § 87(2)(b) was diagnosed with a contusion around her right eye and right elbow pain. X-rays of her elbow came back negative for fractures.

§ 87(2)(b)'s medical Records from § 87(2)(b) dated § 87(2)(b), indicate that § 87(2)(b) was called back to the hospital because closer examination of her x-rays revealed a possible radial head fracture to her right elbow. § 87(2)(b)'s right arm was immobilized and placed in a sling.

CCRB Histories – Encl. 1-2

§ 87(2)(b) has no prior CCRB complaints. Neither PO Jason Rubenstein, with 4 years tenure, nor PO Brian Taylor, with 3 years tenure, has any substantiated allegations in his CCRB history.

Conclusions and Recommendations

Allegations Not Pleaded

At intake § 87(2)(b) stated that officers “dragged” her across the floor, scraping her arms and elbows. She also stated that an officer spit on her during the incident. At that time § 87(2)(b) provided no substantial details regarding these allegations nor did she attribute them to any particular officer. When interviewed in-person at the CCRB, § 87(2)(b) did not reiterate either of these allegations. § 87(2)(g)

In her CCRB interview § 87(2)(b) alleged that she slipped and fell to the ground outside the facility and officers then picked her up by the feet and hand cuffs and heaved her into the ambulance such that she landed on a gurney. § 87(2)(b) could not identify which officers did this. However, per police, EMT and civilian accounts, § 87(2)(b) was highly intoxicated when she exited the building and fell to the ground in an act of defiance, refusing to get into the ambulance. § 87(2)(g)

§ 87(2)(g)

Undisputed Facts

It was undisputed that § 87(2)(b) arrived at § 87(2)(b) intoxicated and past curfew and that when § 87(2)(b) told her to remain downstairs, she refused to do so. It was undisputed that PO Rubenstein and PO Taylor gave § 87(2)(b) several verbal commands, which she ignored, instructing her to go downstairs. It was undisputed that § 87(2)(b) shoved PO Taylor, attempted to escape and resisted arrest, intentionally making it difficult for the officers to cuff her.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A – PO Jason Rubenstein used physical force against § 87(2)(b)

Allegation B – PO Brian Taylor used physical force against § 87(2)(b)

It was undisputed that § 87(2)(b) was intoxicated, disorderly and uncooperative throughout the incident and repeatedly refused to comply with direct orders from both PO Taylor and PO Rubenstein. It was undisputed that § 87(2)(b) shoved PO Taylor and by her own account actively resisted when the officers

tried to place her in cuffs. § 87(2)(g)

Per New York Penal Law 35.30 and Patrol Guide procedure 203-11 “only that amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody.” § 87(2)(g)

Allegation C – An officer used physical force against § 87(2)(b)

Although it was clear that PO Taylor and PO Rubenstein were the two officers who restrained § 87(2)(b) in the third floor lounge, § 87(2)(b) could not discern which officer allegedly struck her head against the wall. § 87(2)(g)

§ 87(2)(g)

Allegation D – PO Brian Taylor spoke obscenely to § 87(2)(b)

§ 87(2)(g) She stated that PO Taylor called her “spic” as an aside when asked to elaborate on events at the hospital. She made no mention of this allegation either in her initial complaint or in the narrative of her CCRB interview. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: